IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOMAS P.JOSEPH

FRIDAY, 21ST NOVEMBER 2008 /6TH AGRAHAYANA, 1930

CRL.REV.PET.NO. 763 OF 2001()

CRA.150/1996 OF ADDL.SESSIONS COURT, THALASSERY
CC.562/1990 OF JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR
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REVN. PETITIONER(S) - ACCUSED:

V.S. DAKSHINAMOORTHI
S/O.SUBRAMANYAN, 46 YEARS,
KANNUR AMSOM DESOM.

BY ADV. SRI.P.K.VIJAYAN
SMT.K.V.JAYALAKSHMY

RESPONDENT(S) - COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, OFFICE OF THE
ADVOCATE GENERAL, ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI MUHAMMED PUZHAKKARA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/10/2008, THE COURT ON 221/11/2008 PASSED THE FOLLOWING:

THOMAS P.JOSEPH, J.

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courts below disregarded the serious inconsistencies in the prosecution case. There was no fair or proper investigation of the case. Registration of the case in collusion with P.W.1 was to trap the revision petitioner.

4. P.W.1, Assistant Director of National Savings, Kannur in his evidence stated that he is a touring officer. All works pertaining to the chest for valuables were entrusted to the revision petitioner who was the only clerk in the office. After P.W.1 assumed office he also continued that procedure. Amounts received in that office used to be kept in the chest in the almirah. Key of the almirah was with the revision petitioner. On 24.2.1990, Rs.3,65,994/- was drawn from the treasury for disbursing the same to the Mahila Pradan Agents as bonus for the period, 1988-89. Revision petitioner disbursed the bonus on 26.2.19990 and 28.2.1990. He was to make endorsements in the relevant register each day for such disbursement. Balance amount had to be kept in the chest. On 28.2.1990 P.W.1 conducted physical verification of the cash, and the closing balance on that day was Rs.2,12,071/-. He made relevant entries in the register. On 1.3.1990 revision petitioner was on duty in the office. Revision petitioner brought the chest from the treasury. P.W.1 verified the same and entrusted it to the revision petitioner for disbursement to

the Mahila Pradan Agents. Revision petitioner disbursed the amount till noon on that day, kept the chest in the almirah and went for lunch with the key of the almirah. Revision petitioner did not return till 4.00 p.m. Next day also, revision petitioner did not attend the office. Hence P.W.1 issued a memo to the revision petitioner and sent it through a peon. That memo was returned unserved as the revision petitioner could not be traced. On 3.3.1990 also, revision petitioner did not attend the office. As per the instructions of the District Collector, P.W.1 gave complaint to the police. Revision petitioner came to the office on 3.3.1990 at about 4.00 p.m. By that time, staff of adjoining office also gathered there. Revision petitioner opened the chest. P.W.1 verified the cash in the presence of the revision petitioner and others and found shortage of Rs.44,879/-. Revision petitioner told P.W.1 that he had taken that amount for personal purpose and would return the same within a week. Revision petitioner also gave him a signed statement to that effect.

5. P.W.2 is an Upper Division Clerk in the Collectorate. His office is near the office of P.W.1. He had seen revision petitioner disbursing bonus during the forenoon of 1.3.1990. On the evening he saw a gathering in the office of P.W.1. He went there and learnt that revision petitioner had left the office. Revision petitioner came back

on 3.3.1990 at about 4.00 p.m. He also went to the office of P.W.1. P.W.1 questioned the revision petitioner. Then revision stated that he had been to Kochi for some urgent personal matters. P.W.1 verified the cash in the chest and found deficit of Rs.44,879/-. Revision petitioner gave a signed statement to P.W.1. P.W.3 is the District Savings Officer whose office is also near the office of P.W.1. He also gave similar evidence as P.W.2. He claimed to have seen the revision petitioner preparing the statement and giving it to P.W.1. P.W.4 is one of the Mahila Pradan Agents and claimed that revision petitioner disbursed the bonus to the agents on 1.3.1990 only till noon. On the afternoon, revision petitioner was not available. P.W.7 is the driver of P.W.1. P.W.7 stated that the revision petitioner had not come to the office on 2.2.1990. P.W.7 was on leave on 3.3.1990. P.Ws.8 and 9 are predecessors in office of P.W.1. They stated about the procedure for dealing with the cash. They claimed that it was the duty of the clerk (revision petitioner was the clerk during the relevant time) to disburse bonus. Remaining witnesses examined by the prosecution are connected with the investigation of the case.

6. Exhibit P5 is the Treasury bill book maintained in the office of P.W.1. Exhibit P5(a) is the entries therein dated 24.2.1990 showing that Rs.3,65,994/- was drawn from the treasury. Exhibit P8 is the

register for disbursement of bonus on 26.2.1990 and 28.2.1990. P.W.1 identified the entries in Exhibit P8 as in the handwriting of the revision petitioner. Exhibit P9 is the cash book maintained in the office of P.W.1. Exhibit P9(a) is the endorsement therein on 28.2.1990. According to P.W.1, he has endorsed and signed Exhibit P9(a) and the closing balance as on 28.2.1990 was Rs.2,12,071/-. Exhibit P6 is the chest register and Exhibit P6(a) is the entries made therein on 1.3.1990. Exhibit P6(a) would show that after the chest was collected on 1.3.1990, it was returned to the treasury only on 5.3.1990. Exhibit P9(a) entries in Exhibit P9 cash book show that closing balance as on 1.3.1990 was Rs.69,310/-. Chest was verified and the balance was found to be only Rs.24,431/- which indicated that there was a deficit of Rs.44,879/-. Exhibit P10 is the signed statement said to be given by the revision petitioner to P.W.1.

7. That, revision petitioner was dealing with the cash in the office of P.W.1 during the relevant time is proved by the above evidence. It is also in evidence that the cash balance as on 1.3.1990 as per the records was Rs.69,310/-. But on verification of the chest it was found that the chest contained only Rs.24,431/-. There is sufficient evidence to show that a sum of Rs.69,310/- was in the custody of the revision petitioner. But there was found to be deficit of

Rs.44,879/-. Once there is entrustment of the amount as above revision petitioner had to account for it.

8. When questioned under Section 313 of the Code of Criminal Procedure, revision petitioner admitted that cash balance as on 28.2.1990 was Rs.2,12,071/- (as proved by Exhibit P9(a). Revision petitioner did not challenge Exhibits P3 to P10 (Exhibit P10 is the signed statement given by him to P.W.1). He admitted that the entires in Exhibits P5 and P9 upto 1.3.1990 are made by him.

9. One contention advanced in the trial court was that P.W.1 was about to retire during the relevant time, he committed the mischief and foisted case against the revision petitioner. Learned magistrate observed that this contention will not stand since evidence revealed that revision petition got good service entry as per the recommendation of P.W.1. Notwithstanding the admission made by the revision petitioner in Exhibit P10, prosecution is bound to prove its case. P.Ws.2 to 4 have given evidence that the revision petitioner had disbursed the bonus to Mahila Pradan Agents only till noon of 1.3.1990. Exhibit P4 attendance register maintained in the office of P.W.1 and Exhibit P4(a) entries during March, 1990 revealed that revision petitioner was working in the office of P.W.1 at the relevant time. Exhibit P4(a) contains endorsement that revision petitioner

returned to the office of P.W.1 only on 3.3.1990 by about 4.00 p.m. This is spoken by P.Ws.1 to 3 as well. Thus, there is sufficient evidence to show that the revision petitioner was entrusted with the money, but there was deficit of Rs.44,879/-. P.W.1 verified the same on 3.3.1990 at 4.00 p.m. in the presence of the revision petitioner.

10. It is contended in the revision petition that a sum of Rs.2,100/- was later recovered from the office of P.W.1 and therefore the charge of misappropriation of Rs.44,879/- is defective. P.W.1 has given the explanation. The said sum of Rs.2,100/- is not part of the deficit detected. Even if it is so that did not mean that there is no criminal breach of trust.

11. The contention of the revision petitioner was that a close relative of his wife had a sudden demise on 1.3.1990, he had to go to Kochi urgently and he had tendered a leave letter to P.W.1. There is nothing on record to show that any such leave letter was given to P.W1. If he were on leave, he need not have carried the key of the almirah with him. I have gone through the evidence and find no reason to interfere with the finding of the courts below regarding criminal breach of trust and that the revision is petitioner is guilty of the offence punishable under Section 409 of the Code.

12. So far as sentence is concerned, it has come out even from

the evidence of P.W.1 that revision petitioner was awarded good service entry sometime before the incident. Even according to P.W.1, he had no reason to suspect the trustworthiness of the revision petitioner and when the revision petitioner had gone for lunch and did not return on time, he even thought that the revision petitioner might have met with some accident. Revision petitioner is not shown to be involved in any other case. Considering his young age and the above circumstances, I am inclined to think that simple imprisonment for a period of six months will be sufficient in the ends of justice.

Revision petition is allowed in part. Sentence imposed on the revision petitioner is modified as simple imprisonment for six months. Period of detention if any, undergone by the revision petitioner will be set off. Bail bond is cancelled.

Criminal Miscellaneous Petition No.3572 of 2001 shall stand dismissed.

THOMAS P.JOSEPH, JUDGE.

vsv

THOMAS P.JOSEPH, J.

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CRL.R.P. NO.763 OF 2001

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21ST NOVEMBER, 2008